

UNITED STATES DISTRICT COURT
DISTRICT OF NEVADA

* * *

WILLIE SAMPSON,

Case No. 3:20-cv-00615-MMD-CSD

Petitioner,

ORDER

v.

NETHANJAH BREITENBACH, *et al.*,

Respondents.

I. SUMMARY

Petitioner Willie Sampson, a Nevada prisoner, filed a counseled third amended petition for a writ of habeas corpus under 28 U.S.C. § 2254. (ECF No. 88 (“Third Amended Petition”).) Now before the Court is Respondents’ motion to dismiss the Third Amended Petition. (ECF No. 90 (“Motion”).) Sampson filed an opposition (ECF No. 92) and Respondents replied (ECF No 95). As discussed below, the Court denies the Motion.

II. BACKGROUND

In March 2003, Sampson was tried in Clark County Nevada for five offenses, including enhancements for Use of a Deadly Weapon, *i.e.*, “a firearm”: (1) First-Degree Kidnapping With Use of a Deadly Weapon; (2) two counts of Lewdness With a Child Under the Age of Fourteen Years With Use of a Deadly Weapon; (3) Attempted Sexual Assault With a Minor Under Fourteen Years of Age With Use of a Deadly Weapon; and (4) Sexual Assault with a Minor Under Fourteen Years of Age With Use of a Deadly Weapon. (ECF No. 7-2 at 16-18.) The jury convicted Sampson for the five charges but found he did not commit those crimes with the use of a deadly weapon. (*Id.* at 2-4.)

By prearrangement the State bifurcated for purposes of trial “Count (6),” for Possession of a Firearm by an Ex-Felon. (ECF No. 7-2 at 7-9.) Following the jury verdict, Sampson pleaded guilty to Count (6) under a guilty plea agreement (“GPA”) because he

1 admittedly “had a gun” in his house. (*Id.* at 11.) The parties agreed that, “[i]n the event
2 that the matter is remanded back for a new trial for any reason, whatsoever . . . it’s not an
3 admission, it would not be used in any subsequent trials.” (*Id.*)

4 In 2015, the Ninth Circuit Court of Appeals vacated the jury’s verdict for the first
5 trial. (ECF Nos. 31-7, 31-8.) In 2017, a second jury convicted Sampson for the same five
6 offenses as in 2003. (ECF No. 37-9.) The convictions were affirmed on direct appeal and
7 in *pro se* state postconviction review proceedings. (ECF Nos. 39-4, 40-10.)

8 Sampson filed a *pro se* federal petition for writ of habeas corpus under 28 U.S.C.
9 § 2254. (ECF No. 7 (“Original Petition”).) As relevant here, Sampson attached as exhibits:
10 (1) the jury instructions for the first trial that concern the jury’s assessment whether he
11 used a deadly weapon during the commission of the offenses; (2) the jury’s verdict from
12 the first trial finding that although he committed the five offenses, he did not use a deadly
13 weapon during the commission of the offenses; (3) his state postconviction petition
14 following the denial of his direct appeal after the second trial, which included an affidavit
15 and attached exhibits; and (4) the Nevada Supreme Court’s affirmance of the denial of
16 the state petition. (ECF Nos. 7; 7-1 at 29-31; 7-2 at 2-4, 93-96.) This Court appointed
17 counsel who filed a first amended petition. (ECF No. 16.)

18 Respondents moved to dismiss the first amended petition (ECF No. 30), and the
19 parties briefed the motion (ECF Nos. 47; 52) but before the Court ruled on that motion,
20 Sampson filed a motion for leave to file a second amended petition. (ECF No. 49.)
21 Respondents filed a non-opposition, reserving the right to assert defenses, and asserting
22 their lack of objection should not be construed as a concession of any kind, or as waiver
23 of any defenses. (ECF No. 53.) This Court granted Sampson’s motion for leave to file the
24 second amended petition and denied the motion to dismiss the first amended petition as
25 moot. (ECF No. 54.) The Court stated the briefing for the motion to dismiss the first
26 amended petition indicated an answer to the second amended petition would be efficient
27 and that Respondents could assert their exhaustion/procedural default defenses in that
28 answer because the parties agreed any unexhausted claims are technically exhausted,

1 subject to the procedural default doctrine, Sampson claimed he could overcome the
2 defaults under *Martinez v. Ryan*, 566 U.S. 1 (2012), and Respondents requested the
3 Court defer *Martinez* analysis until the merits of Sampson's claims were briefed in an
4 answer and a reply. (*Id.* at 2.)

5 Respondents did not file a motion to dismiss the second amended petition; instead
6 they filed an answer (ECF No. 65), and Sampson filed a reply (ECF No. 70). Before the
7 Court considered the merits of the second amended petition, Sampson filed a motion for
8 leave to file a third amended petition to add Claim 8 (ECF No. 85). Respondents filed a
9 non-opposition asserting they did not concede Sampson's factual statements in the
10 motion, that Claim 8 is timely under 28 U.S.C. § 2254, or that the claim is meritorious and
11 not subject to dismissal. (ECF No. 86.) The Court granted the motion for leave to file the
12 Third Amended Petition (ECF No. 87).

13 The Third Amended Petition alleges eight claims:
14

15 Claim One: Mr. Sampson was deprived [of] effective assistance of counsel
16 in violation of the Sixth Amendment when trial counsel failed to properly
object to the State's introduction on Mr. Sampson's testimony from his first
trial.

17 Claim Two: Mr. Sampson was deprived [of] effective assistance of counsel
18 in violation of the Sixth Amendment when trial counsel failed to properly
object to the State's introduction of prior testimony of Officers Joes Kisner
and Michael Sneed [sic].
19

20 Claim Three: Mr. Sampson was deprived [of] effective assistance of counsel
when trial counsel failed to object to the expert testimony of John Pacult.

21 Claim Four: Mr. Sampson was deprived [of] effective assistance of counsel
22 when trial counsel failed to properly object to the admission of Mr.
Sampson's prior conviction of prohibited person in possession of a firearm.

23 Claim Five: Mr. Sampson's Fourteenth Amendment rights were violated
24 when the district court increased his sentence based on P.T.'s subsequent
misconduct and criminal history.

25 Claim Six: Mr. Sampson was deprived [of] effective assistance of counsel
26 when trial counsel failed to respond to the State's sentencing memorandum.

27 Claim Seven: Trial counsel's errors, considered cumulatively, prejudiced
Mr. Sampson.

28 Claim Eight: Mr. Sampson was deprived [of] effective assistance of counsel
in violation of the Sixth Amendment when trial counsel failed to move to

preclude the State's introduction of evidence related to acquitted conduct.

(ECF No. 88.)

I. DISCUSSION

Respondents move to dismiss the third amended petition as untimely. (ECF No. 90.) They argue Claim 8 does not relate back, that Claims 1-4 and 6-7 are unexhausted, and the petition must be dismissed as a mixed petition. (*Id.*) Sampson counters that Claim 8 relates back to the Original Petition, that Claims 1-4 and 6-8 are technically exhausted by procedural default, and he can overcome the defaults under *Martinez*. (ECF No. 92.) Respondents agree that, should the Court find Claim 8 relates back, Claims 1-4 and 6-8 are technically exhausted by procedural default, and request the Court defer ruling on whether Sampson can overcome the defaults until review of the merits. (ECF No. 95.) The Court finds that Claim 8 relates back to the timely Original Petition and Claims 1-4 and 6-8 are technically exhausted by procedural default. Sampson alleges he can overcome the default under *Martinez*, and the Court will defer ruling on the defaults of Claims 1-4 and 6-8 until review on the merits.

A. Relation Back

In Claim 8, Sampson alleges he was deprived the effective assistance of trial counsel during the second trial because counsel failed to move to preclude, based on double jeopardy grounds, the State's introduction of evidence that Sampson possessed and used a firearm during the commission of the offenses. (ECF No. 88 at 32-37.) Respondents argue that Claim 8 does not relate back to the Original Petition because it does not share a common core of operative facts with any claims in that petition.¹ (ECF No. 90 at 8.) Sampson concedes Claim 8 is a new claim but argues that it relates back to the Original Petition because, liberally construed, it shares a common core of operative facts with the Original Petition, including exhibits attached to that Original Petition, and does not rely on facts that differ in time and type from those in the Original Petition. (ECF

¹Respondents agree that Sampson's original *pro se* petition was timely filed under 28 U.S.C. § 2254. (ECF No. 90 at 7.)

1 No. 92 at 2-5.) The Court finds Claim 8 is timely because it relates back and does not rely
2 on facts that differ in time and type from those in the Original Petition. (ECF Nos. 7, 7-1,
3 7-2.)

4 Whether a claim “relates back” to a previously-filed, timely § 2254 petition, is
5 governed by Rule 15(c)(1)(B) of the Federal Rules of Civil Procedure, which provides that
6 “[a]n amendment to a pleading relates back to the date of the original pleading when . . .
7 the amendment asserts a claim or defense that arose out of the conduct, transaction, or
8 occurrence set out—or attempted to be set out—in the original pleading.” *Mayle v. Felix*,
9 545 U.S. 644, 650 (2005) (ruling that Rule 15(c) applies in habeas corpus cases involving
10 state prisoners). “So long as the original and amended petitions state claims that are tied
11 to a common core of operative facts, relation back will be in order.” *Id.* at 664.

12 Facts in the original and amended petitions need not “be stated in the same level
13 of detail.” *Ross v. Williams*, 950 F.3d 1160, 1168 (9th Cir. 2020) (*en banc*). “Relation back
14 may be appropriate if the later pleading ‘merely correct[s] technical deficiencies or
15 expand[s] or modif[ies] the facts alleged in the earlier pleading,’ ‘restate[s] the original
16 claim with greater particularity,’ or ‘amplif[ies] the details of the transaction alleged in the
17 preceding pleading.’” *Id.* An amended habeas petition “does not relate back . . . when it
18 asserts a new ground for relief supported by facts that differ in both time and type” from
19 those alleged in the timely petition. *Id.* “[F]or all purposes,’ including relation back, the
20 Original Petition consists of the petition itself and any ‘written instrument[s]’ that are
21 exhibits to the petition.” *Id.* at 1167.

22 “A document filed *pro se* is ‘to be liberally construed,’ and ‘a *pro se* complaint,
23 however inartfully pleaded, must be held to less stringent standards than formal pleadings
24 drafted by lawyers.” *Erickson v. Pardus*, 551 U.S. 89, 94 (2007) (internal citations and
25 quotation marks omitted). The relation-back doctrine must also be liberally applied. See
26 *Clipper Exxpress v. Rocky Mountain Motor Tariff Bureau, Inc.*, 690 F.2d 1240, 1259 n.29
27 (9th Cir. 1982). The Supreme Court has noted that “[a]lthough the Federal Rules of Civil
28 Procedure do not require a claimant to set forth an intricately detailed description of the

1 asserted basis for relief, they do require that the pleadings give the defendant fair notice
2 of what the plaintiff's claim is and the grounds upon which it rests." *Baldwin Cnty.*
3 *Welcome Ctr. v. Brown*, 466 U.S. 147, 150 n.3 (1984).

4 The Ninth Circuit instructs courts to "follow two steps to determine whether an
5 amended petition relates back to an original petition that relied on an appended written
6 instrument to help set forth the facts on which it based its claims". Courts (1) "determine
7 what claims the amended petition alleges and what core facts underlie those claims;" and
8 (2) "for each claim in the amended petition," courts examine "the body of the original
9 petition and its exhibits" to see whether the pleading set out or attempted to set out "a
10 corresponding factual episode" or "whether the claim is instead supported by facts that
11 differ in both time and type" from those set forth in the original petition. *See Ross*, 950
12 F.3d at 1167 (quoting Fed. R. Civ. P. 15(c)(1)(B); *Mayle*, 545 U.S. at 650)) (internal
13 quotation marks omitted).

14 Sampson argues Claim 8 relates back to his Original Petition where he alleged
15 that, "[he] presented [his] claims [as] best [he] could because now with the prosecution
16 using the weapon enhancement in the second trial, double jeopardy was an issue," and
17 that he was "subjected to double jeopardy in the second trial" when the State presented
18 evidence of the deadly weapon after Mr. Sampson was acquitted of the deadly weapon
19 enhancements at the first trial. (ECF No. 92 at 3.) Respondents argue that Sampson's
20 statements in the Original Petition are conclusory, and he failed to allege in the Original
21 Petition specific facts showing a double-jeopardy violation. (ECF No. 95 at 3.)

22 Claim 8 alleges ineffective assistance ("IAC") of trial counsel for the second trial
23 for failing to move to preclude the State from introducing evidence related to acquitted
24 conduct. (ECF No. 88 at 32-37.) The core facts underlying the claim are (1) the jury for
25 the first trial returned a verdict finding Sampson did not use a firearm during the
26 commission of any of the offenses; (2) trial counsel in the second trial failed to assert that,
27 based on the verdict in the first trial, double jeopardy precluded the State from relitigating
28 the ultimate issue whether Sampson used or possessed a firearm during the offenses;

1 and (3) Sampson was prejudiced because the State relied on evidence that Sampson
2 used and possessed a firearm during the offenses to convict him at the retrial. (*Id.*)

3 Ground 3 of Sampson's Original Petition alleged trial counsel was ineffective "in
4 failing to produce . . . the 1st jury trial verdict of the 1st trial." (ECF No. 7 at 8.) The core
5 facts that Sampson alleged for this claim included: (1) "[t]he jury was presented in there
6 [sic] deliberation of the case, the second amended information, whether these five counts
7 were done with or without the use of a deadly weapon"; (2) the jury for the first trial
8 "considered it, acquit[t]ing petitioner of the deadly weapon enhancements"; (3) trial
9 counsel "would not bring up" the jury's verdict from the first trial; (4) "double jeopardy was
10 an issue" "with the prosecution using [sic] the weapon enhancement in the second trial";
11 (5) "the suppressed evidence supported the inference that the jury in the first trial
12 acquit[t]ed petitioner of all counts one through five, without the use of a deadly weapon";
13 (6) that "fraud and misrepresentations of the 1st trial prevented counsel in the second trial
14 from fully and fairly presenting it's [sic] it,s [sic] case during the second trial"; and (7) "there
15 is a reasonable probability petitioner'[s] case was negatively affected by suppression of
16 [the jury' verdict]." (*Id.* at 8-10.) Exhibit 3 to the Original Petition includes the jury
17 instructions on use of a deadly weapon in the commission of an offense and Exhibit 4 is
18 the jury's verdict from the first trial. (ECF Nos. 7-1 at 28-31; 7-2 at 1-4.)

19 After liberally construing the Original Petition, the Court finds each petition alleges
20 trial counsel was ineffective in failing to raise the issue of the prior jury verdict for the
21 firearm enhancement, and that Sampson was prejudiced because counsel's failure to do
22 so permitted the State to violate double jeopardy by obtaining convictions using evidence
23 in the second trial that Sampson used a firearm during the commission of the offenses.
24 Accordingly, the Court finds Claim 8 relates back to the Original Petition because it arises
25 out of the same "conduct, transaction, or occurrence," and shares a "common core of
26 operative facts uniting the original and newly asserted claims." *Mayle*, 545 U.S. at 659.

27 Respondents claim that the statements concerning Double Jeopardy set forth in
28 the original petition are conclusory. (ECF No. 95 at 3.) The Court finds the allegations in

1 the Original Petition, in the context of the allegations as a whole, sufficiently placed
2 Respondents on notice that Sampson claimed trial counsel was ineffective in failing to
3 raise the issue of the prior acquittal for the use of a firearm during the commission of the
4 offenses, counsel's actions failed to prevent the State from using evidence of the use of
5 a firearm during the second trial, and that, he alleged that, as a result, the State used
6 such evidence in violation of double jeopardy.

7 Sampson additionally contends Claim 8 relates back to his state petition, which is
8 an exhibit to the Original Petition. (ECF No. 92 at 4.) Respondents contend that Claim 8
9 does not share a common core of operative facts with the state petition because Sampson
10 erroneously alleged in his state petition that he was acquitted of Count 6, Possession of
11 a Firearm by an Ex-Felon; rather than acquitted of using a firearm during the commission
12 of the offenses. (ECF No. 95 at 3.) They argue that because the jury for the first trial did
13 not acquit him of Possessing a Firearm as an Ex-Felon, "there is no common core of
14 operative facts." (*Id.* at 4.) Assuming *arguendo* that the Original Petition does not suffice
15 for relation back, the Court finds Claim 8 relates back to the state petition.

16 It is true that, at many points in the state petition, Sampson confused his acquittal
17 for the deadly weapon enhancement for using a firearm during the commission of the
18 offenses with his guilty plea to Possession of a Firearm by an Ex-felon.² He alleged in his
19 state petition that counsel for the second trial was ineffective in failing to "do a complete
20 pretrial investigation into his clients [sic] assertion that . . . the first jury acquitted [him] of
21 Count (6)"; and by failing to "produce" "the first juries [sic] verdict." (ECF No. 7-2 at 33.)
22 He alleged such "evidence could show . . . the first juries [sic] acquit[t]al of Count (6), that
23 would have prevented the state from using Count (6) in the second jury trial. See affidavit
24 an[d] exhibits for support." (*Id.*) He further alleged the trial court erred by allowing the

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26 ²The Nevada Supreme Court's decision denying relief for the allegations in the
27 state petition (attached to the Original Petition) noted Sampson "confused the offense of
28 a prohibited person owning or possession a firearm with a deadly weapon enhancement."
(ECF No. 7-2 at 94 n.2.) Although that court noted Sampson's related "double jeopardy
claim," it stated it "should have been raised on direct appeal after the second trial," and
he failed to demonstrate good cause for failure to do so. (*Id.* at 95 n.4.)

1 State to “impeach” him “with this allege[d] conviction of ex-fellon [sic] in possession of a
2 firearm, dispite [sic] the jury in the first trial acquit[t]ed” him of that charge. (*Id.*) He also
3 alleged the Supreme Court “squarely held that the double jeopardy clause preclud[e]s the
4 government from relitigating any issue that was necessary [sic] decided by a jury’s
5 acquit[t]al in a prior trial,” and relied on *Ashe v. Swensen*, 397 U.S. 436 (1970). (*Id.* at 34.)
6 And he alleged “the issue preclusion component of the double jeopardy clause barred a
7 second trial of that issue.” (*Id.* (citing *North Carolina v. Pearce*, 395 U.S. 711 (1969)).)

8 Claim 8, however, does not rely on an acquittal for Count 6; Claim 8 relies on the
9 jury’s acquittal for the firearm enhancement. See *Ross*, 950 F.3d at 1167 (“An amended
10 petition relates back if it asserts one or more claims that arise out of ‘the conduct,
11 transaction, or occurrence’ that the original petition ‘set out’ or ‘attempted to . . . set out’—
12 in other words, if the two petitions *rely on* a common core of operative facts.”) (emphasis
13 added). Moreover, the state petition demonstrates Sampson, at the very least, attempted
14 to set out an IAC claim that counsel’s failure to raise the issue of the acquittal for the
15 firearm enhancement resulted in prejudice, e.g., a double-jeopardy violation.

16 The state petition alleged trial counsel for the second trial failed to “produce” “the
17 first juries [sic] verdict” and that “jeopardy attached when the . . . state presented to the
18 jury in there [sic] deliberations of the case that all (5) five counts were done ‘with the use
19 of a deadly weapon.’ See Exhibit (B)” (ECF No. 7-2 at 33-34.) “Exhibit B” was the jury’s
20 verdict in the first trial and that exhibit clarifies that Sampson was acquitted of the firearm
21 enhancement; not Possession of a Firearm by an Ex-Felon. (ECF No. 7-2 at 1-4, 43.)
22 Thus, Sampson’s allegations in the state petition, while inaccurate in many parts,
23 demonstrate his attempt to allege a claim related to his acquittals for using a firearm
24 during the offenses. See Rule 15(c)(1)(B) (allowing relation back to an occurrence that
25 was only “attempted to be set out” in the original pleading).

26 The Court concludes that Claim 8 is united with the allegations in the state petition
27 in that, in each, Sampson claims (1) trial counsel was ineffective in failing to produce the
28 verdict of the first jury; (2) the verdict of the first jury acquitted Sampson of using a firearm

1 during all five of the charged offenses; and (3) he was prejudiced because counsel's
 2 ineffective assistance resulted in a violation of double jeopardy of the issue-preclusion
 3 variety under *Ashe*. Accordingly, the Court finds Claim 8 relates back to the state petition
 4 because the claim arises out of the same "conduct, transaction, or occurrence" and
 5 shares a "common core of operative facts uniting the original and newly asserted claims,"
 6 and because Claim 8 does not rely on facts that differ in time and type to those in the
 7 state petition. Because Claim 8 is not time-barred, the Motion to dismiss Claim 8 as
 8 untimely is denied.

9 **B. Technical Exhaustion and Procedural Default**

10 The parties agree that Claims 1-4 and 6-8 of the Third Amended Petition are
 11 unexhausted. (ECF No. 90 at 2, 9; 92 at 5-6.) Respondents contend this Court should
 12 apply applicable state procedural bars and dismiss the petition as a mixed petition under
 13 *Rose v. Lundy*, 455 U.S. 509, 510 (1982). (ECF No. 90 at 2, 9-10.) Sampson contends
 14 the unexhausted claims are technically exhausted by procedural default and he can
 15 overcome the default under *Martinez*. (ECF Nos. 92 at 5 n.2, ECF No. 47 at 5-24.)

16 A state prisoner first must exhaust state court remedies on a habeas claim before
 17 presenting that claim to the federal courts. See 28 U.S.C. § 2254(b)(1)(A). This
 18 exhaustion requirement ensures that state courts, as a matter of comity, will have the first
 19 opportunity to address and correct alleged violations of federal constitutional
 20 guarantees. See *Coleman v. Thompson*, 501 U.S. 722, 730-31 (1991).

21 "A petitioner has exhausted his federal claims when he has fully and fairly
 22 presented them to the state courts." *Woods v. Sinclair*, 764 F.3d 1109, 1129 (9th Cir.
 23 2014) (citing *O'Sullivan v. Boerckel*, 526 U.S. 838, 844-45 (1999)). To satisfy the
 24 exhaustion requirement, a claim must have been raised through one complete round of
 25 either direct appeal or collateral proceedings to the highest state court level of review
 26 available. See *O'Sullivan*, 526 U.S. at 844-45; *Peterson v. Lampert*, 319 F.3d 1153, 1156
 27 (9th Cir. 2003) (*en banc*). A properly exhausted claim "must include reference to a
 28 specific federal constitutional guarantee, as well as a statement of the facts that entitle

1 the petitioner to relief.” *Woods*, 764 F.3d at 1129 (quoting *Gray v. Netherland*, 518 U.S.
 2 152, 162-63 (1996)). See also *Castillo v. McFadden*, 399 F.3d 993, 999 (9th Cir.
 3 2005) (finding that a fair presentation requires both the operative facts and federal legal
 4 theory upon which a claim is based).

5 A federal court need not dismiss a claim on exhaustion grounds if it is clear that
 6 the state court would find the claim procedurally barred. See *Castille v. Peoples*, 489 U.S.
 7 346, 351 (1989). See also *Dickens v. Ryan*, 740 F.3d 1302, 1317 (9th Cir. 2014) (*en*
 8 *banc*) (“An unexhausted claim will be procedurally defaulted, if state procedural rules
 9 would now bar the petitioner from bringing the claim in state court.”). A claim may be
 10 considered procedurally defaulted if “it is clear that the state court would hold the claim
 11 procedurally barred.” *Sandgate v. Maass*, 314 F.3d 371, 376 (9th Cir. 2002). Where a
 12 petitioner has “procedurally defaulted” a claim, federal review is barred unless he “can
 13 demonstrate cause for the default and actual prejudice as a result of the alleged violation
 14 of federal law.” *Coleman*, 501 U.S. at 750.

15 “Generally, post-conviction counsel’s ineffectiveness does not qualify as cause to
 16 excuse a procedural default.” *Ramirez v. Ryan*, 937 F.3d 1230, 1241 (9th Cir.
 17 2019) (citing *Coleman*, 501 U.S. at 754-55). However, in *Martinez*, the Supreme Court
 18 created a narrow exception to the general rule that errors of post-conviction counsel
 19 cannot provide cause for a procedural default. See *Martinez*, 566 U.S. at 16-17.
 20 “Under *Martinez*, the procedural default of a substantial claim of ineffective assistance of
 21 trial counsel is excused if state law requires that all claims be brought in the initial
 22 collateral review proceeding . . . and if in that proceeding there was no counsel or counsel
 23 was ineffective.” *Ramirez*, 937 F.3d at 1241 (citing *Martinez*, 566 U.S. at 17).

24 It is clear that Sampson would face multiple procedural bars if he were to return to
 25 state court with his IAC Claims 1-4 and 6-8. See, e.g., NRS §§ 34.726, 34.810. Sampson
 26 advances only *Martinez* as a basis for excusing the anticipatory default of his IAC claims.
 27 (ECF No. 92 at 5.) The Court reads Sampson’s opposition as a concession that the only
 28 basis for cause as to any of the unexhausted IAC counsel claims is *Martinez* and will

1 consider Claims 1-4 and 6-8 technically exhausted on that basis.

2 The Court defers ruling on whether Claims 1-4 and 6-8 are procedurally defaulted
3 given the fact-intensive nature of the claims and Sampson's cause and prejudice
4 arguments. The Court finds that these questions are inextricably intertwined with the
5 merits of the claims themselves. Accordingly, the Court will defer a determination on
6 whether Sampson can demonstrate cause and prejudice until the time of merits
7 determination. Respondents may renew the procedural default argument as to Claims 1-
8 4 and 6-7 in their answer.

9 **II. CONCLUSION**

10 The Court notes that the parties made several arguments and cited to several
11 cases not discussed above. The Court has reviewed these arguments and cases and
12 determines that they do not warrant discussion as they do not affect the outcome of the
13 Motion before the Court.

14 It is therefore ordered that Respondents' motion to dismiss (ECF No. 90) is denied.

15 It is further ordered that the Court defers consideration of whether Petitioner can
16 demonstrate cause and prejudice under *Martinez v. Ryan*, 566 U.S. 1 (2012), to
17 overcome the procedural default of Claims 1-4 and 6-8 until the time of merits review.
18 Respondents may reassert the procedural default arguments with respect to those claims
19 in their answer.

20 It is further ordered that within 60 days of entry of this order, Respondents must
21 file an answer addressing all claims in the Third First Amended Petition for Writ of Habeas
22 Corpus and also addressing whether any of Claims 1-4 and 6-8 are barred
23 by procedural default under federal law.

24 It is further ordered that the Petitioner will have 60 days from service of the answer
25 within which to file a reply.

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1 It is further ordered that, in all other respects, the schedule for further proceedings
2 set forth in the order entered December 4, 2020 (ECF No. 6) will remain in effect.

3 DATED THIS 30th Day of September 2024.

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6 MIRANDA M. DU
7 CHIEF UNITED STATES DISTRICT JUDGE
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